IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 659 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DALWADI GOVINDBHAI AMARSHIBHAI
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 659 of 2000
MR PS CHAMPANERI for Appellant
MR KT DAVE, APP for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 10/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.R.SHAH)

The present appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 ("the Code" for short) against the judgment dated May 19, 2000 passed by the learned Additional Sessions Judge, Surendranagar, in Sessions Case No.22 of 1993, by which the appellant is convicted of the offence under Section 376 of the Indian Penal Code ("the IPC" for short), and sentenced to suffer R.I. for eight years and a fine of Rs.10,000=00, in default, S.I. for one year.

2. In view of the decision in the case of State of Punjab v. Ram Dev, 2003 A.I.R. SCW 6947, we do not propose to mention the name of the victim.

3. The parents of the victim reside at village Sayla. The name of her father is Dhanjibhai whereas name of her mother is Gauriben. She is married to Pravinbhai Bhopabhai of Wadhvan town. The incident in question had taken place on August 21, 1992. Fourteen days prior to the date of incident, the victim had come to her parental house to stay there. On the date of incident, her husband had come to village Sayla to take her with him at her matrimonial home. In the morning of date of incident, the victim had served tea etc. to her husband. Her husband had expressed his desire to visit Mela which was held in the village, but the victim had told her husband that her mother and sister had gone to field to pick up Guvar and that after picking up Guvar, she would come back and would go with him to visit Mela. At about 8.00 a.m., she had proceeded to go to Wadi of her father. When she had reached near trees in the sim of village, the appellant had accosted her and asked her why she was going to Wadi all alone. In order to dissuade the appellant from following her, the victim had told the appellant that she was being followed by her mother and father, and had started walking fast. However, the appellant had continued to chase her and caught hold of her near the bushes of babul trees. As the victim had tried to free herself from the clutches of the appellant, she had received nail injuries on her cheek and neck. The appellant had dragged the victim to a ditch and after throwing her in the ditch, had mounted on her. The victim had entreated the appellant to let her go, but after lifting the petticoat of the victim, the appellant had unchained his pant and committed rape on her. The victim had shouted for help and, therefore, the appellant had gagged her mouth with her Odhani (upper garment worn by girls). After committing the rape on the victim, the

appellant had threatened her that if the incident was narrated by her to anyone, she would be cursed by female ghost of Anada Waghari. The victim was weeping uncontrollably and had gone to Wadi where her mother and sister were picking up Guvar. After reaching Wadi, the victim had narrated the incident to her mother and sister. Therefore, leaving the work of picking Guvar unfinished, the victim was brought home by her mother and sister. The father of the victim was not available in the house as he had gone to visit another village. On his return to the house, the victim had narrated the incident to him. The victim in the company of her father had gone to Sayla Police Station for lodging the complaint where she had lodged the complaint. The complaint was reduced in writing by Police Sub Inspector, Mr.P.B.Mer. The Police Officer had taken the victim to Sayla Government Dispensary for medical examination and drawn panchnama of place of incident, which was pointed out by the victim. He had also attached clothes worn by the victim at the time of the incident. The appellant was arrested on August 22, 1992 and he was also taken to Limdi Dispensary for medical examination. The clothes put on by the appellant were also taken into custody. The clothes and other articles were sent to Forensic Science Laboratory for analysis. On the completion of investigation, the appellant was chargesheeted of the offence punishable under Section 376 of the IPC in the Court of learned Judicial Magistrate, Sayla. As the offence punishable under Section 376 of the IPC is exclusively triable by a Court of Sessions, the case was committed to the Sessions Court, Surendranagar, for trial where it was numbered as Sessions Case No.22 of 1993.

4. The learned Judge to whom the case was made over for trial, had framed charge against the appellant at Exh.3 of the offence punishable under Section 376 of the IPC. The charge was read over and explained to the appellant, who had pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution had examined (1) complainant - victim, P.W.-1 at Exh.12, (2) Gauriben wife of Dhanjibhai & mother of the victim, P.W.-2, at Exh.14, (3) Pravinbhai Bhopabhai, husband of the victim, P.W.-3 at Exh.15, (4) Bhartiben Dhanjibhai, sister of the victim, P.W.-4 at Exh.16, (5) Majuben Rambhai, P.W.-5 at Exh.18, (6) Ramjibhai Lakhabhai, P.W.-6 at Exh.20, (7) Kamruddin Fatubhai, P.W.-7 at Exh.22, (8) Dr.Tillottama P. Parmar, P.W.-8 at Exh.25, (9) Dr.Lalitbhai Punabhai Chavda, P.W.-9 at Exh.28, (10) Dr.Ghanshyambhai Chaturbhai Motka, P.W.-10 at Exh.30, and (11) Parsottambhai Bhimjibhai Mer, Investigating Officer, P.W.-11 at Exh.38, to prove its case against the

appellant. The prosecution had also produced documentary evidence such as; complaint of the victim at Exh.13; panchnama of seizure of muddamal clothes at Exh.19; panchnama of place of incident at Exh.21; panchnama of person of the accused at Exh.23; medical certificate issued by Medical Officer, Limdi, at Exh.29; medical certificate issued by Medical Officer, Sayla regarding injuries of accused, at Exh.31; injury certificate of victim at Exh.32; letter with regard to sending of muddamal to Forensic Science Laboratory at Exh.39; receipt issued by the office of Forensic Science Laboratory with regard to receipt of muddamal at Exh.40; and, report of Forensic Science Laboratory at Exh.41, in support of its case against the appellant.

5. After recording of the evidence of prosecution witnesses was over, the learned Judge had explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the case of the appellant was that he had not committed rape but somebody else had committed rape, and he was falsely implicated in the case. However, no evidence was led by him to substantiate his defence.

6. After appreciating the evidence adduced by the prosecution and hearing the learned counsels for the parties, the learned Judge held that the case of the prosecution against the appellant of the offence under Section 376 of the IPC was proved beyond reasonable doubt. In view of this conclusion, the learned Judge has convicted the appellant of the offence punishable under Section 376 of the IPC and imposed the sentence referred to hereinabove by judgment dated May 19, 2000, giving rise to this appeal.

7. Mr.P.S.Champaneri, learned counsel of the appellant, submitted that the appellant had not committed rape on the victim, but somebody else had committed rape and as he was falsely implicated in the offence, the appeal should be allowed. It was submitted that the complaint, Exh.13, given by the victim should not have been treated as `First Information Report' because evidence of Gauriben suggests that Head Constable Chandubhai of Sayla Police Station had come to the house of the victim and recorded her statement and the said statement would be `First Information Report' in the case. What was highlighted was that the said statement is not produced by the prosecution on the record of the case and after drawing adverse inference, the prosecution

case should have been disbelieved. After referring to the evidence of Pravinbhai Bhopabhai, who is husband of the victim, it was argued that his evidence establishes that the victim had not disclosed the name of the appellant as perpetrator of the crime to her husband and had left for Wadhvan at 1.00 p.m. making the case of the prosecution highly doubtful to the effect that the victim had lodged the complaint at about 4.00 p.m. and, therefore, benefit of doubt should have been given to the appellant. According to the learned counsel of the appellant, the appellant had not sustained injuries on upper part of his body, which in normal course would have been received if resistance had been offered by the victim and, therefore, it should have been held that the appellant was falsely implicated in the case. It was submitted by the learned counsel of the appellant that panchnama indicating seizure of the clothes of the appellant is not proved through the evidence of panch witnesses and, therefore, seizure of pant having stains of semen would not be an incriminating circumstance against the appellant. It was argued that the report of Forensic Science Laboratory showing that the petticoat and pant put on by the appellant had the same group of semen should not have been relied upon as the contents of the report of Forensic Science Laboratory were never explained to the appellant while recording further statement under Section 313 of the Code nor his explanation regarding the same was sought and as the learned Judge has taken into consideration the factors which could not have been taken into consideration, the appeal should be allowed. In the alternative, it was argued that the appellant is married man with two children and as he has to maintain his family members by doing agricultural work, the sentence undergone by him should be imposed on him for commission of offence under Section 376 of the IPC.

8. Mr.K.T.Dave, learned Additional Public Prosecutor, contended that the finding recorded by the learned Judge that the prosecution has proved that the appellant had committed the offence punishable under Section 376 of the IPC is neither unreasonable nor perverse, but is based upon the evidence on record and, therefore, the appeal should be dismissed. It was argued that the victim had narrated the incident to her mother and sister and had also disclosed the name of the appellant as perpetrator of crime and as no enmity is suggested, the contention that the appellant was falsely implicated in the offence should not be accepted. It was submitted that the victim herself had lodged the complaint which lends corroboration to her sworn

testimony and as her evidence is also corroborated by injuries proved through medical certificate as well as circumstantial evidence in the nature of report Forensic Science Laboratory, the appeal should be dismissed. According to the learned Additional Public Prosecutor, the evidence does not disclose that Head Constable, Chandubhai, had recorded statement of the victim after visiting her home and, therefore, Exh.13, which is complaint lodged by the victim, is rightly treated as `First Information Report' in the case. It was further argued that panchnama of seizure of clothes stands amply proved through the evidence of the Investigating Officer and as the learned Judge had explained to the appellant incriminating evidence appearing against the appellant in the evidence of prosecution, it is not correct to say that the report of Forensic Science Laboratory should be discarded because the contents of the same were not put to the appellant at the time of recording his further statement. The learned APP submitted that no ground is made out by the learned counsel of the appellant to interfere with well-reasoned conviction of the appellant under Section 376 of the IPC and, therefore, the appeal should be dismissed. Dealing with alternative plea regarding reduction of sentence, the learned APP has relied upon judgment in State of Karnataka v. Puttaraja, (2004) 1 SCC 475, and submitted that leniency in sentence relating to cases of rape being against public interest and object of sentence, plea for reduction of sentence should not be accepted by this Court.

9. We have heard Mr.P.S.Champaneri, learned counsel for the appellant, and Mr.K.T.Dave, learned Additional Public Prosecutor, on behalf of the respondent State. We have undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

10. The evidence of prosecutrix, which is recorded at Exh.12, shows that she had come to reside at her parental house fourteen days prior to the date of incident and on the day of incident, her husband had come to her parental house to bring her to her matrimonial home. The prosecutrix has narrated in detail as to how the incident had taken place. The injuries sustained by the prosecutrix lend corroboration to her testimony. Though the victim has been searchingly cross examined by the defence counsel, nothing could be brought on record to shake her version regarding the incident. It is well settled that a woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for

conviction in a rape case. To insist on corroboration except in the rarest of rare case is to equate one who is a victim of lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. The evidence of a woman or girl who is raped stands on high pedestal than that of an injured witness. Here in this case, the medical evidence shows that the victim was pregnant by two months at the time of incident. On the date of incident, her husband was present in her parental house. Under the circumstances, there is no reason why the evidence of the victim, who had complained of rape by the appellant, should be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion. It is relevant to notice that the incident of rape on the victim is not denied by the appellant. The only defence pleaded is that he was falsely implicated in the case to save one Shamji Valji. Except making bare suggestion that false case was lodged by the appellant to save Shamji Valji, no evidence was led by the appellant to substantiate this defence. It is well settled that the suggestion made but denied does not constitute evidence in eye of law. The appellant has not even remotely suggested that either the victim or her parents or her husband had any enmity with him. There was no reason for the victim to name the appellant as perpetrator of crime to save Shamji Valji.

11. At this stage, it would be relevant to notice the decision of the Supreme Court dealing with point of false implication of an accused in rape case. In Prithi Chand v. State of Himachal Pradesh, A.I.R. 1989 SC 702. It was contended that the appellant was falsely involved due to a long standing enmity between the father of the appellant and the girl's father. The prosecutrix had in her deposition stated that the two families were not on talking or visiting terms, since their relations were strained. It was suggested in the course of cross-examination that Ratna, the son of PW-8 Phulan Devi was intimate with the prosecutrix and he had raped the girl. In his statement under Section 313 of the Code of Criminal Procedure, the appellant had put forth the case that when he had returned to his village in the evening, he had seen some ladies at the girl's house and heard the girl saying that she was subjected to rape by Ratna. Negativing the contention that the appellant was falsely involved due to a long standing enmity, the Supreme Court has held that it is not possible to believe that the prosecutrix and her parents would allow the real culprit

to escape and falsely involve an innocent person for the commission of the crime. Except for the suggestion made in the cross-examination of PW-8 Phulan Devi, Ratna's mother and the statement under Section 313 of the Code of Criminal Procedure there was no other material on record which could give credence to the suggestion.

12. In Promod Mahto & Ors. v. The State of Bihar, A.I.R. 1989 SC 1475, it was argued that a false case was foisted on accused due to communal feelings. The Supreme Court while negativing the said contention, has held that even if communal feelings had run high, it is inconceivable that an unmarried girl and two married women would go to extent of staking their reputation and future in order to falsely set up a case of rape on them for sake of communal interests.

13. Applying the principles laid down in abovereferredto two decisions of the Supreme Court to the facts of the case on hand, we find that the plea of false implication put forth by the appellant cannot be accepted. As false implication of the appellant is ruled out, the case put forth by the victim will have to be accepted. The conviction of the appellant on the basis of testimony of the victim will have to be upheld as her evidence inspires confidence and appears to the Court to be natural and truthful.

14. However, even if one were to seek corroboration to the testimony of the victim, the same is available in abundance. The victim is corroborated fully by her complaint, which was lodged after her father had returned home. The plea that Head Constable, Chandubhai, had recorded the statement of the victim which should have been treated as `First Information Report' and adverse inference should have been drawn against the prosecution for non production of the same, has no merit. It was never suggested to the victim that her statement was recorded by Head Constable, Chandubhai. The evidence of Investigating Officer, Mr.Mer, establishes that Head Constable, Chandubhai, had not visited the house of the prosecutrix before her complaint was registered. A stray statement made by mother of the victim to the effect that statement of the prosecutrix was recorded by Head Constable, Chandubhai, would not establish that Head Constable, Chandubhai, had visited the house of the prosecutrix and recorded her statement before she had lodged complaint. Even if it is assumed for the sake of argument that some statement was recorded by Head Constable, Chandubhai, it is not established that he was Police Officer Incharge of Sayla Police Station nor it is

established that information gathered by him was entered into a Register maintained at the Police Station. Therefore, such a statement even if recorded would not constitute `First Information Report' within meaning of Section 154 of the Code. Thus, the sworn testimony of the prosecutrix stands amply corroborated by her complaint.

15. Her testimony further stands corroborated by natural and inspiring evidence of her mother, Gauriben, and sister, Bhartiben, who have in no uncertain terms stated before the Court that immediately after the incident, the victim had come weeping to Wadi and disclosed the name of the appellant as perpetrator of crime. It is important to notice that nothing was suggested to these two witnesses as to why they were falsely deposing against the appellant.

16. The plea that the evidence of witness, Pravinbhai, who is husband of the victim, shows that the victim had not disclosed the name of the appellant as perpetrator of crime and had left village Sayla for Wadhvan town at about 1.00 p.m. making her case that she had lodged the complaint at 4.00 p.m. doubtful and, therefore, conviction should be set aside, is devoid of merit. A bare perusal of evidence of Pravinbhai shows that he has deposed before the Court in a most casual manner. After stating that he had found clothes put on by her wife to be torn and her petticoat and Odhani had stains, he had stated that on inquiry being made, his wife had narrated to him the incident of rape. He has further stated that though the name of perpetrator of crime was disclosed to him, he had forgotten the name of the person as disclosed by his wife and, thereafter, they had come to Wadhvan. In cross examination, he has stated that the victim had not given name of anyone as perpetrator of crime. In the cross examination, again he has maintained that his wife had narrated the incident of rape on her. The victim who had narrated the whole incident to her mother and sister would not fail to narrate the incident to her husband who was physically present in parental house nor would fail to disclose the name of perpetrator of crime to her husband. It is relevant to notice that it was never suggested to the victim during her cross-examination that she had not disclosed the name of perpetrator of crime to her husband. To condemn the victim on the basis of evidence of her husband would amount to doing injustice to her. The claim of the husband that he had left village Sayla in the company of the victim for Wadhvan town does not inspire confidence because medical evidence shows that

after the complaint was lodged, the victim was medically examined by different doctors at different places. The evidence of Investigating Officer also shows that the complaint, as narrated by her, was registered. Thus, the presence of the victim in village Sayla stands amply proved by other reliable evidence on record and no benefit of doubt can be given to the appellant on the basis of casual testimony of her husband.

17. The contention that petticoat put on by the victim at the time of incident was not sent to Forensic Science Laboratory for analysis, but another petticoat of different colour was sent for analysis and, therefore, the report of the analysis should not be relied upon, has no merits. The victim in her evidence has stated that she had worn yellow petticoat at the time of incident whereas report of Forensic Science Laboratory indicates that the colour of the petticoat was brown. However, this would not suggest that the petticoat put on by the victim at the time of incident, was not sent to Forensic Science Laboratory at all. The prosecution has produced muddamal list at Exh.2. Therein, it is specifically stated that colour of the petticoat was light yellow brown. Similarly in the panchnama of seizure of clothes of the victim, it is stated that the colour of the petticoat was light yellow brown. Thus, there is no major discrepancy regarding colour of the petticoat put on by the prosecutrix at the time of incident.

18. The plea that absence of injury on the person of the appellant rules out his involvement in the incident is merely stated to be rejected. If one looks to medical certificate, Exh.31, it is specifically mentioned therein that the appellant had sustained one abrasion on the right leg on the lower half size of 7 cms. and one abrasion on the left leg on the posture surface. Thus, there is no manner of doubt that during the incident, the appellant had sustained injuries, may be they were minor in nature. Further, panchnama of seizure of the clothes of the appellant shows that the pocket of his shirt was torn. The panchnama of place of incident indicates that there was scuffle and resistance by the victim. Under the circumstances, it is wrong to contend that absence of injuries on the person of the appellant rules out involvement of the appellant in the incident.

19. The argument that panch witnesses have not supported the seizure of the clothes and, therefore, the report of Forensic Science Laboratory regarding clothes does not assist the prosecution, has no substance. It is

well settled that panchnama of seizure of clothes can be proved by the evidence of Investigating Officer. In Vahaji Ravaji Thakore & Anr. v. State of Gujarat, 2003 (3) G.L.H. 283, the Division Bench of this Court, in paragraph 35, has held as under:

> "Merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown overboard as unreliable. It must be realised that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasised that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of independent witnesses, in theory, it would be giving a right of veto to the panchas so far as the question of culpability of an accused is concerned. If the evidence of Police Officer is otherwise found to be true and dependable, judicial pragmatism requires that merely because the panchas do not support, it should not be made a ground to discard his evidence."

Applying principles laid down in the said judgment to the facts of the present case, we find that the contents of panchnama of seizure of clothes stand proved by natural and trustworthy evidence of the Investigating Officer, Mr.Mer. The seizure of clothes, as referred to by Mr.Mer, was never challenged during his cross examination. Therefore, no benefit of doubt can be given to the appellant on the basis that seizure of his clothes is not proved as required by law.

20. The plea that report of Forensic Science Laboratory, which was a xerox copy and not the original one, could not be relied upon for coming to the conclusion to the effect that circumstantial evidence supports testimony of the victim, is merely stated to be rejected. We have seen the original report which is signed by Government Scientific Expert and, therefore, it is wrong to say that original copy of the report was not produced on record of the case. Further, Section 293 of the Code provides as under:

"293. Reports of certain Government Scientific experts.- (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) xxx xxx xxx xxx

(4) This section applies to the following Government scientific experts, namely:-

(a) to (d) xxx xxx xxx xxx

(e) the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) xxx xxx xxx xxx"

Whereas Section 294 of the Code provides under:

"294. No formal proof of certain documents.- (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) xxx xxx xxx xxx

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person by whom it purports to be

signed:

Provided that the court may, in its discretion, require such signature to be proved."

The record does not show that any request was made by the defence to summon expert of Forensic Science Laboratory to prove the contents of report. No challenge to report was made when it was produced on record during the examination of Investigating Officer, Mr.Mer. Therefore, the argument that xerox copy of report of Forensic Science Laboratory could not have been relied upon has no substance, and is hereby rejected.

21. The submission that petticoat of the victim and the clothes of the appellant, which were sent to Forensic Science Laboratory, were not the same which have been seized, has no substance. This argument was canvassed because the report was produced on record in the year 2000 though the incident had taken place in the year 1992. Panchnama of seizure of clothes would indicate that the clothes of the victim were seized on August 21, 1992 whereas clothes put on by the appellant were seized on August 22, 1992. They were sent to Forensic Science Laboratory on August 24, 1992. The receipt issued indicating the receipt of muddamal clothes by the Deputy Director, Forensic Science Laboratory, Junagadh, Exh.40, dated August 26, 1992 also mentions that muddamal articles were received on that date. The report bears date of September 23, 1993. However, it was produced on record of the case in the year 2000. Production of the report in the year 2000 would not indicate that the clothes which were seized and sent to Forensic Science Laboratory were not examined by Forensic Science Laboratory more particularly when report of Forensic Science Laboratory was never challenged by the appellant.

22. The plea that the name of the appellant was not disclosed as perpetrator of crime by the victim when she was treated by doctors for her injuries and, therefore, there being doubt about identity of perpetrator of crime, the appellant should be acquitted, has no substance. In P.Babu & Ors. v. State of A.P., (1994) 1 SCC 388, it is held as under:

"It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage

> the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and the inquiry would be confined as to how he received the injuries namely the weapons used etc."

Thus, merely because in the case history, the name of the appellant is not recorded as perpetrator of crime, it cannot be said that identity of the appellant as perpetrator of crime was in doubt or was not established. As observed earlier, soon after the incident the victim had narrated the entire incident to her mother and sister and also disclosed the name of the appellant before the Police Officer. Therefore, non-disclosure of the name of the appellant as perpetrator of crime before the doctors would not suggest that the appellant was not involved in the offence.

23. Further, the evidence in the form of report of Forensic Science Laboratory shows that the petticoat put on by the victim and the pant which was put on by the appellant at the time of incident had the same group of semen. The plea that the contents of the report were not explained to the appellant at the time of recording statement under Section 313 of the Code and, therefore, the report should be ignored, has no substance. A bare perusal of further statement of the appellant makes it evident that except bare denial, no specific answer was given by the appellant to any question put to him. In answer to the last question, it was stated by the appellant that he was falsely implicated in the case to save another persons. He had not given the name of that another person. The appellant was given opportunity to explain the report of Forensic Science Laboratory, but he had stated that it was wrong to say that FSL report was obtained. In State (Delhi Administration) v. Dharmpal, (2001) 10 SCC 372, the Supreme Court has considered the effect of failure to draw accused's attention to inculpatory material to enable him to explain it in examination under Section 313 of the Code. That was a case under the provisions of Prevention of Food Adulteration Act, 1954. There was omission to put to accused the contents of certificate of Director, Central Food Laboratory, while recording statement under Section 313 of the Code. What is held by the Supreme Court is that where the prosecution is dependent on any report or certificate it is enough to draw the attention of the accused to it and it is not necessary that his attention be specifically drawn to the contents of such report or

certificate. Applying the said principles to the facts of the present case, we find that it was not necessary to draw the attention of the appellant to the contents of report of Forensic Science Laboratory and such omission would neither vitiate the trial nor conviction. Even if it is assumed for the sake of argument that it was necessary for the learned Judge to draw attention of the appellant to the contents of the report of Forensic Science Laboratory, we find that failure to draw the attention of the appellant to the contents of the report has not resulted in any prejudice to him.

24. In Rama Shankar Singh & Ors. v. State of West Bengal, A.I.R. 1962 SC 1239, the Supreme Court has emphasised importance of further statement in a criminal trial. In the said case, the prosecution had strongly relied upon the two circumstances against Bimala (1) that when she had come out of the house of Ramdeo Ahir, she had a blood-stained knife in her hand and (2) that when she was arrested from the godown of Bhola Singh, the knife was in her hand. To these matters of evidence, attention of the accused Bimla was not invited. Similarly, attention of the appellant, i.e Ram Shanker, to the evidence that when he had come out of the room of Ramdeo Ahir, he had a knife in his hand was not invited. However, it was observed by the Supreme Court that beyond a bare denial, the learned counsel was unable to suggest any other answer which the accused could give to these pieces of evidence even if they had been specifically put to them. What is emphasised by the Supreme Court is that failure to comply with the provisions of Section 342 (old) is an irregularity, and unless injustice is shown to have resulted therefrom, a mere irregularity is by itself not sufficient to justify an order of retrial. What is ruled is that the Appellate Court must always consider whether by reason of failure to comply with a procedural provision, which does not affect the jurisdiction of the Court, the accused has been materially prejudiced.

Applying the ratio laid down in the abovequoted decision of the Supreme Court to the facts of this case, we find that except bare denial, no reply was given by the appellant and failure on the part of the learned Judge to explain the contents of report of Forensic Science Laboratory has not prejudiced the appellant at all inasmuch as no explanation could have been offered by the appellant to find of same group of semen on his pant as well as on petticoat put on by the victim.

25. Thus, circumstantial evidence in the form of

report of Forensic Science Laboratory also lends corroboration to the testimony of the victim. The net result of the above discussion is that by cogent and reliable evidence, the prosecution has proved beyond reasonable doubt tat the appellant had committed rape on the victim on the date of incident and is guilty of offence punishable under Section 376 of the IPC. No ground has been made out by the learned counsel of the appellant to interfere with the conviction of the appellant under Section 376 of the IPC and, therefore, the conviction of the appellant will have to be upheld.

26. The alternative submission that the appellant should be punished to sentence which he has already undergone, cannot be accepted in view of the decision of the Supreme Court State of Karnataka v. Puttaraja (supra) wherein guidelines to be followed by Courts in India while imposing sentence in rape cases, have been laid down. The pertinent observations made by the Supreme Court are as under:

> "It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal."

It is also observed that "rape is violation with violence of the private person of the victim, and abominable outrage by all canons."

Applying the principles laid down by the Supreme Court in the above mentioned case to the facts of the present case, we find that the appellant had disgraced the victim in repulsive manner. The appellant had taken undue advantage of loneliness of the victim, and raped her though she was married. Normally, we find that punishment of ten years of R.I. is being imposed for commission of offence punishable under Section 376 of the

IPC, but in this case, R.I. for eight years is imposed which, by no stretch of imagination, can be considered to be harsh or not warranted in the facts of the case. Having regard to the manner in which the appellant had committed offence under Section 376 of the IPC, reduction in sentence is not called for and, therefore, the plea of reduction in sentence cannot be accepted.

27. For the foregoing reasons, we do not find any substance in the appeal and the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. Muddamal to be disposed of in terms of the directions given by the learned Judge in the impugned judgment.

(J.M. Panchal, J.)

(M.R. Shah, J.)

Rajendra